**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION NO. 2082 OF 2006**
**IN**
**APPEAL NO. 245 OF 2006**
**IN**
**SUIT NO. 1414 OF 1979**

1. M/s. New Era Fabrics P.L. & Anr. ] .. Appellants (Ori.Def.1 & 2)

Versus

1. Nandkishor Lalbhai Mehta & Anr. ] .. Respondents (Ori.Pltff. & D3)

Mr. M.M. Vashi with Mr. Sean Wassoodew for the applicants - appellants.

Mr. H.J. Thakkar, senior counsel with Ms. Mamata Saadh and Mr. Faizal Sayyed i/b M/s. M.K. Ambalal & Co. for the respondent No.1.

**CORAM: R.M. LODHA &**
**S.A. BOBDE, JJ.**

**DATED: 19TH SEPTEMBER, 2006**

**P.C. :**

. By the judgment and decree dated 12th December, 2005, the trial Judge decreed the plaintiff's suit (respondent herein) thus:

> "The Plaintiff's suit is decreed in terms of prayer (a). it is directed that the defendants shall apply to the concerned authorities for getting permission under the provisions of Sections 22 and 27 of the Urban Land (Ceiling & Regulation) Act, as also for getting permission for conversion of industrial/commercial use to the residential use of the suit property within eight weeks from today. In the event, the permission as

> stated above is not granted by either of the Authorities, there shall be a decree in terms of prayer clause b(i) to b(v), as observed above.
>
> The defendants shall also pay the Plaintiffs costs.
>
> In case the decree in terms of prayer clause (b) takes effect, the amount deposited by the defendants in Court along with the interest shall be adjusted towards the amount due to the Plaintiffs."

2. The defendants have come in Appeal against the said judgment and decree. The Appeal is admitted. The defendants have taken out Notice of Motion being Notice of Motion No.1368 of 2006 praying therein that the operation of the impugned judgment and decreed be stayed. We have disposed of the said Notice of Motion by separate order staying the operation of the impugned judgment and decree subject to the appellants furnishing Bank Guarantee in the sum of Rs.66,56,600/- within two months from today.

3. By this Notice of Motion, the original plaintiff (respondent No.1 herein) prays for the following reliefs:

> "(a) that pending the hearing and final disposal of the Notice of Motion, the Court Receiver, High Court, Bombay or some other fit and proper person be appointed as Receiver of the properties described in Exhibits 'A' hereto with all powers under XL

> Rule 1 of the Code of Civil Procedure, 1908 including power to take posession thereof and if required to take forcible possession thereof from the Appellants and/or any other person found in possession and/or occupation thereof by breaking open the locks and if necessary with the help of Police for and on behalf of the plaintiff;
>
> (b) that pending the hearing and final disposal of the Notice of Motion, the Appellants by themselves, their servants and agents be restrained by an order and injunction of this Hon'ble Court from in any manner disposing off, alienating, or encumbering or parting with possession of or creating third party right, title, interest or claim of any nature whatsoever in the property including more particularly described in Exhibit 'A' hereto;"

4. For the reasons that we have indicated in our order disposing of Notice of Motion No.1368 of 2006 which need not be repeated and the said reasons may be treated as part of this order, it would be seen that as on date, the only decree that stands in favour of the plaintiff is money decree in terms of prayer clause b(i) to b(v). The requisite permissions having been rejected by the concerned authorities, it cannot be said that the decree for specific performance holds the field. The respondent No.1 (original plaintiff) was well aware before making the present application that the appellants (original defendants No.1 and 2) made necessary applications before the competent authorities as required under the decree and that such permissions have been rejected, but despite that the present

application by way of Notice of Motion for appointment of Receiver and injunction has been made as if the decree for specific performance in favour of the plaintiffs holds the field by relying upon the document dated 10th July, 1982. The document dated 10th July, 1982 is the letter sent by Assistant Engineer, Town Planning, Mahim to M/s. Natwarlal M. Barai, Architects informing that the user of the plot 268 T.P.S. III (Mahim) is changed from industrial to residential by the Arbitrator as per the 1st variation Award. The said document was not produced before the trial Judge. If there was already permission of change of user of the subject plot from industrial to residential, the learned trial Judge would not have directed the defendants No.1 and 2 (the appellants) to apply to the concerned authorities for change of user.

5. Be that as it may, we are of the view that present application for appointment of Court Receiver and injunction is frivolous and liable to be rejected which we order with costs. We quantify the costs at Rs.10,000/-.

. Notice of Motion stands disposed of accordingly.

Sd/-

**[R.M. LODHA, J.]**

Sd/-
**[S.A. BOBDE, J.]**